Ram Chandra vs. Manak Lal's LR-Sajjan Lal & Ors.

1. SB Civil 1st Appeal No.75/1988

Smt. Shyama Devi vs. LRs of Manak Lal

2. SB Civil 1st Appeal No.76/1988

Date of Order: 13th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.D.R.Bhandari for the appellant/s.
Mr.Rameshwar Choudhan for the respondent/s.

Heard learned counsel for the parties.

These two appeals arise out of the same judgment. The suit was filed by plaintiff Manak Lal alleging interalia that his neighbor, respondent No.2, sold out his property to respondent No.1 He claimed right of pre-emption. Right of pre-mption is claimed on the strength of the allegation that there is a common wall in between the houses of plaintiff and respondent No.2 who has sold the property to respondent No.1. The plaintiff has claimed that he has preferential right to purchase it and without offering it to him respondent No.2 has sold it to respondent No.1.

The learned counsel for the appellant submitted that the basis of the right of pre-emption is a common wall. The question of pre-emption, as and when there is a common wall, has been held by this Court in Dharam Pal vs. Smt. Kaushalya Devi (RLR 1989 (2) 826) that such right is non-existant . The findings of the Court in the judgment are in paragraph 8 which reads as under:

> 17. I accordingly hold that firstly, there is concurrent finding of fact of both the courts below that the plaintiff has failed to establish that the wall in question was a common wall. Secondly, even if it was so, the right arising thereupon are only in the nature of easementary rights (i.e. cross-easementary rights) and the position of the plaintiff is no better than a neighbor and a right of pre-emption based on such neighbor-hood or vicinage was void as held by the Supreme Court and does not revive by the omission of Article 19 (1) (f) and Article 13 (1) by the Forty Forth Constitution Amendment for the reason that the doctrine of eclipse is

> not applicable to it. The plaintiff's case in relation to " ahata" consequently fails."

In view of the findings contained herein in the decision rendered by this Court in Dharam Pal's case (supra) in relation to the right of pre-emption, this Court is of the opinion that basis of the right claimed is a common wall. Existence of a common wall do not give any right of pre-emption to the plaintiff. The suit was liable to be dismissed which has wrongly been decreed by the trial court.

The appeals deserve to be allowed. The findings that there existed a right of pre-emption in the plaintiff, is set aside. Consequently, the judgment deserves to be set aside. In the result, the appeals are allowed and the suit is accordingly dismissed.

(BHAGWATI PRASAD), J.

L.George